1 2 3 4 5	RENE L. VALLADARES Federal Public Defender State Bar No. 11479 ALINA M. SHELL Assistant Federal Public Defender 411 E. Bonneville, Ste. 250 Las Vegas, Nevada 89101 (702) 388-6577/Phone (702) 388-6261/Fax	
6	Attorney for SANCHEZ-OSUNA	
7		
8	UNITED STATES DISTRICT COURT	
9	DISTRICT OF NEVADA	
10	UNITED STATES OF AMERICA,	2:12-cr-447-GMN-GWF and
11	Plaintiff,	2:12-cr-389-GMN-VCF
12	VS.	MOTION TO ALLOW LATE FILING OF NOTICE OF APPEAL
13	JOSE SANCHEZ-OSUNA,	AND ORDER
14	Defendant.	ANDORDER
15		
16	COMES NOW the defendant, Jose Sanchez-Osuna, by and through Assistant Federal Publ	
17	Defender Alina M. Shell, and respectfully requests that this Court enter an order excusing Jos	
18	Sanchez-Osuna's late filing of a notice of appeal to the United States Court of Appeals for the Nint	
19	Circuit from the Judgments entered in the above captioned cases, as well as the Court's collatera	
20	order denying his motion for appointment of CJA counsel for the purposes of appeal.	
21	This motion is made pursuant to Federal Rule of Appellate Procedure 4(b)(4) and is based	
22	upon the following Points and Authorities filed herewith.	
23	DATED this 23 rd day of October, 2003.	
24		
25	RENE L. VALLADARES Federal Public Defender	
26	/s/ Alina M. Shell	
27	By:ALINA M. SHELL,	
28		istant Federal Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Appellate Procedure (FRAP) 4(b)(1)(A)(I) mandates that a notice of appeal in a criminal case must be filed within fourteen days after the entry of judgment. If a defendant fails to file within the fourteen day-window, Rule 4(b)(4) provides that "[u]pon a showing of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time or filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." *See* FRAP 4(b)(4).

In the instant matter, Mr. Sanchez-Osuna's failure to file a timely notice of appeal from this Court's entry of judgment and order in the above-captioned case can be excused for good cause.

On March 4, 2013, pursuant to a plea agreement with the government, Mr. Sanchez-Osuna pleaded guilty to one count of Deported Alien Found Unlawfully in the United States, a violation of 8 U.S.C. § 1326. (*See* case no. 2:12-cr-00389-GMN-GWF Trial Court Clerk's Record (CR) 26 (change of plea); *see also* CR 27 (plea agreement); *see also* case no. 2:12-cr-00447-GMN-GWF CR 17 (plea agreement).) As part of the plea agreement, Mr. Sanchez-Osuna agreed to waive his right to appeal any sentence imposed by this Court, the right to appeal the manner in which the Court determined that sentence, and the right to appeal any other aspect of the conviction or sentence. (*See* case no. 2:12-cr-00389-GMN-GWF CR 17, pp. 9-10.) Mr. Sanchez-Osuna also waived all collateral challenges, except for non-waivable claims of ineffective assistance of counsel. (*See id.* at 10.) Mr. Sanchez-Osuna waived this rights on the advice of counsel.

On September 5, 2013, this Court sentenced Mr. Sanchez-Osuna to fifty-one months incarceration. (*See* case no. 2:12-cr-00389-GMN-GWF CR 36 (minutes of sentencing); *see also* CR 38 (judgment in a criminal case); case no. 2:12-cr-00447-GMN-GWF CR 25 (minutes of supervised release hearing held in tandem with sentencing in case no. 2:12-cr-00389-GMN-GWF).) After this Court sentenced Mr. Sanchez-Osuna, he informed Ms. Korenblat that he wished to appeal his sentence. Citing the conflict of interest created by Mr. Sanchez-Osuna's pursuit of an appeal, Ms. Korenblat moved this Court to permit her to withdraw, and requested the Court appoint appellate counsel. (*See* case no. 2:12-cr-00389-GMN-GWF CR 37 (motion to withdraw); *see also* 2:12-cr-00447-GMN-GWF CR 27.)

1	On Spetember 12, 2013, this Court er	
2	00389-GMN-GWF CR 39; 2:12-cr-00447-G	
3	order granting Ms. Koreblat's motion to wit	
4	appoint counsel. (See 2:12-cr-00389-GMN-GV	
5	denial of the motion for appointment of cour	
6	because Ms. Korenblat acknowledged the wai	
7	Mr. Sanchez-Osuna chose to file a petition to s	
8	On September 20, 2013, undersigned	
9	Court reconsider its order denying appointment	
10	2:12-cr-00447-GMN-GWF CR 29.) Undersi	
11	motion for reconsideration. While waiting for	
12	the notice of appeal—September 26, 2013—ca	
13	The failure to file a notice of appea	
14	undersigned counsel was attempting to resolv	
15	Court. Pursuant to the exception outlined in FR	
16	established good cause to excuse the late filing o	
17	On October 22, 2013, undersigned cou	
18	Appellate Chief for the United States Attorney	
19	has no opposition to this motion.	
20		
21		
22		
23	By:	
24		
25	IT IS SO ORDERED. IT IS FURTHER ORDERED that Defer	
26	MOTION for District Judge to Reconsider Or	
27	No. 29) is hereby DENIED as moot .	
28	Shu	
	Gloria M. Navarro United States District Judge	

ntered written judgments in both cases. (See 2:12-cr-MN-GWF CR 26.) The same day, the Court issued an thdraw, but denying without prejudice the motion to WF CR 39; 2:12-cr-00447-GMN-GWF CR 28.) In its nsel, the Court held that the motion was premature iver of appeal, and that counsel could be appointed if set aside his conviction pursuant to 28 U.S.C. § 2255.

counsel filed an unopposed motion requesting that this of counsel. (See 2:12-cr-00389-GMN-GWF CR 40; gned counsel subsequently filed two addendums to her the resolution of the motion, the deadline for filing me and went.

Il was not due to oversight or neglect, but because re the motion for reconsideration she filed with this RAP 4(b)(4), undersigned counsel asserts that she has f the attached notice of appeal.

insel spoke to United States Attorney Elizabeth White, y's Office for the District of Nevada. The government

Respectfully submitted,

RENE L. VALLADARES Federal Public Defender

/s/ Alina M. Shell

ALINA M. SHELL, Assistant Federal Public Defender

ndant's

der (ECF

DATED: 11/13/13

EXHIBIT "A"

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1 2 3 4 5	RENE L. VALLADARES Federal Public Defender State Bar No. 011479 ALINA M. SHELL Assistant Federal Public Defender 411 East Bonneville Avenue, Suite 250 Las Vegas, Nevada 89101 (702) 388-6577/Phone (702) 388-6261/Fax		
6	Attorney for SANCHEZ-OSUNA		
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8	UNITED STATES DISTRICT COURT		
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10	UNITED STATES OF AMERICA,	2:12-cr-447-GMN-GWF and	
11	Plaintiff,	2:12-cr-389-GMN-VCF	
12	V.	NOTICE OF APPEAL	
13	JOSE SANCHEZ-OSUNA,		
14	Defendant.		
15			
16	NOTICE is hereby given that JOSE SANCHEZ-OSUNA, defendant herein, hereby appeals		
17	from any adverse rulings and determinations in this matter to the United States Court of Appeals for		
18	the Ninth Circuit from the judgment and conviction of	entered on September 12, 2013.	
19	DATED this the 23 rd day of October, 2013.		
20			
21	RENE L. VALLADARES Federal Public Defender		
22		Alina M. Shell	
23	By:		
24		INA M. SHELL istant Federal Public Defender	
25			
26			
27			
28			